

[EXECUTIVE ORDER NO. 109, May 27, 2002]

STREAMING THE RULES AND PROCEDURES ON THE REVIEW AND APPROVAL OF ALL CONTRACTS OF DEPARTMENTS, BUREAUS, OFFICES AND AGENCIES OF THE GOVERNMENT, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND THEIR SUBSIDIARIES.

WHEREAS, in line with the government's program of good governance, there is a need to streamline procedures for the review and approval of government contracts for the expeditious implementation of development projects and the speedy delivery of basic services while promoting transparency, impartiality, and accountability in government transactions;

WHEREAS, to achieve the foregoing, the National Economic and Development Authority (NEDA) has recommended the issuance of this Executive Order;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

Section 1. Public Bidding. It is the policy of this Administration that all Government Contracts shall be awarded through open and competitive public bidding, save in exceptional cases provided by law and applicable rules and regulations, as described in Section 2 of this Executive Order. Except for contracts required by law to be acted upon and/or approved by the President, Department Secretaries shall have full authority to give final approval and/or enter into all Government Contracts of their respective departments and of bureaus, offices, and agencies, government-owned or controlled corporations and their subsidiaries attached or under the control and/or supervision of the Department Secretary, awarded through public bidding, regardless of the amount involved. Except for contracts required by law to be acted upon and/or approved by the President, Department Secretaries shall have full authority to give final approval and/or enter into all Government Contracts of their respective departments and of bureaus, offices, and agencies, government-owned or controlled corporations and their subsidiaries attached or under the control and/or supervision of the Department Secretary, awarded through public bidding, regardless of the amount involved. Every Department Secretary and Head of bureau, office, and agency of the government, as well as the Head and governing board of a government-owned or controlled corporation and subsidiary, shall be responsible and accountable for ensuring that all Government Contracts entered into are in accordance with all existing laws, rules and regulations and are consistent with the spending and development priorities of government.

Section 2. Exceptions to Public Bidding. The law and applicable rules and regulations provide for exceptional cases where a Government Contract may be excepted from the requirement of public bidding, as follows:

a. For infrastructure projects, including supply contracts, civil works, and other related contracts, as provided under Section 62, Chapter 13, Book IV, Revised Administrative Code of 1987, Section 4, Presidential Decree No. 1594, and Executive Order No. 40 dated October 8, 2001 [EO 40] and its Implementing Rules and Regulations; b. For procurement of goods, supplies, materials and related services as provided under EO 40 and its Implementing Rules and Regulations; and c. For consulting services as provided under EO 40 and its implementing Rules and Regulations.

Section 3. Requirements for Exception from Public Bidding. Where the Department Secretary has made a determination that a Government Contract involving an amount of at least Three Hundred Million Pesos (P300 Million) falls under any of the exceptions from public bidding described in Section 2 hereof, the Department Secretary shall, before proceeding with the alternative modes of procurement as provided by law and applicable rules and regulations, obtain the following:

a. An opinion from the Secretary of Justice that said Government Contract falls within the exceptions from public bidding; and b. Approval from the Director-General of NEDA to proceed with a specific alternative mode of procurement under the exceptional cases provided by the law and applicable rules and regulations.

After compliance with the foregoing requirements, except for contracts required by law to be acted upon and/or approved by the President, Department Secretaries shall have full authority to give final approval and/or enter into such Government Contracts excepted from the requirement of public bidding, regardless of the amount involved. Where a Government Contract, not required by law to be acted upon and/or approved by the President, involves an amount below Three Hundred Million Pesos (P300 Million) and the concerned Department Secretary has made a determination that the Government Contract falls under any of the exceptions from public bidding described in Section 2 and/or enter into the Government Contract without need of obtaining the foregoing requirements. The Department Secretary may delegate in writing to appropriate officials, subject to appropriate ceilings, this authority to determine whether a Government Contract involving an amount below Three Hundred Million Pesos (P300 Million) falls under any of the exceptions from public bidding described in Section 2 hereof.

Section 4. Governing Law for Government Contracts

a. BOT Contracts. Contracts undertaken through Build Operate and Transfer (BOT) schemes and other variations shall be governed by the provisions of Republic Act No. 6957, as amended by Republic Act. No. 7718, and its Implementing Rules and Regulations.

b. Contracts for infrastructure projects, including supply contracts, civil works, and other related contracts. Contracts for infrastructure projects, including supply contracts, civil works, and other related contracts shall be governed by the Revised Administrative Code of 1987, Presidential Decree No. 1594 and EO 40 and its Implementing Rules and Regulations.

c. Contracts for goods, supplies, materials and related services. Contracts for goods, supplies, materials and related services shall be governed by EO 40 and its

Implementing Rules and Regulations.

d. Contracts for consulting services. Contracts for consulting services shall be governed by EO 40 and its Implementing Rules and Regulations.

e. Lease Contracts. Lease contracts for goods, supplies and materials shall be governed by EO 40 and its implementing Rules and Regulations. f. Lease contracts for real estate and other properties shall be governed by Executive Order No. 301 dated July 26, 1987 and guidelines issued by the Department of Public Works and Highways. g. ODA-funded Contracts. Government Contracts financed wholly or partly with Official Development Assistance (ODA) funds shall be governed by Republic Act No. 4860, as amended and Republic Act No. 8182, as amended by Republic Act No. 8555. NEDA shall issue guidelines for Government Contracts financed with ODA funds with the objective of promoting transparency, impartiality and accountability in government transactions.

Section 5. Joint Venture Agreements. NEDA shall, in consultation with the Department of Justice, issue guidelines regarding joint venture agreements with private entities with the objective of promoting transparency, impartiality, and accountability in government transactions and where applicable, complying with the requirements of an open and competitive public bidding.

Section 6. Transactions of Government Financial Institutions. Transactions of government financial institutions in the ordinary course of business shall not be covered by the provisions of this Executive Order. Such transactions shall instead be subject to applicable provisions of law and to guidelines, rules and regulations issued by the Department of Finance.

Section 7. Requirements for All Government Contracts. All Government Contracts shall be.

- a. Processed completely by the concerned department, bureau, office and agency of the government, including a government-owned or controlled corporation and its subsidiary;
- b. Signed and/or approved by the Head of the bureau, office, and agency of the government, the Head and/or governing-owned or controlled corporation and its subsidiary and the Department Secretary; and

Accompanied by the certifications issued by (i) the concerned Department Secretary; (ii) the Head of the bureau, office or agency; and (iii) the Head and governing board of the government-owned or controlled corporation or its subsidiary, that the contract is in accordance with all existing laws, rules and regulations.

Section 8. Authority to bind the Government. All Government Contracts shall require the approval of the Department Secretary after the Government contract has been signed and /or approved by the Head of a bureau, office or agency or by the Head and / or governing board of the government-owned or controlled corporation or its subsidiary, before the Government Contract shall be considered approved in accordance with law and binding on the government. Except for contracts required by law to be acted upon and/or approved by the President, the Department Secretary possesses the full authority to approve and/or enter into a Government